

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 02-4977

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

KENNETH TYRONE FULTZ,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Durham. N. Carlton Tilley, Jr., Chief District Judge. (CR-02-196)

Submitted: March 21, 2003

Decided: April 7, 2003

Before WIDENER, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Louis C. Allen, III, Federal Public Defender, William C. Ingram, Assistant Federal Public Defender, Greensboro, North Carolina, for Appellant. Anna Mills Wagoner, United States Attorney, Michael F. Joseph, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Kenneth Tyrone Fultz appeals his 180-month sentence imposed following his guilty plea to possession of a firearm by a convicted felon, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2) (2000), and possession of cocaine base with intent to distribute, in violation of 21 U.S.C. § 841 (2000). We affirm.

Fultz contends Apprendi v. New Jersey, 530 U.S. 466 (2000) (holding any fact, other than prior conviction, that increases criminal penalty beyond prescribed statutory maximum must be submitted to jury and proved beyond reasonable doubt), requires sentencing factors such as career offender status be alleged in the indictment, submitted to a jury, and proven beyond a reasonable doubt. We have previously held sentencing factors are not required to be alleged in the indictment or submitted to the jury. Fultz was sentenced within the statutory maximum, and Apprendi does not apply. See United States v. Kinter, 235 F.3d 192, 200 (4th Cir. 2000).

For the foregoing reasons, we affirm Fultz's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED